1890-012 Chancery Causes: William M. G. Barron vs James H. Kelly &c
Lee Co.

Parrott, Morgan

CA-Debt
T-Property

$85.00

By the first of March 1885
I bind myself to pay
W. M. G. Barron eighty five
dollars for value recd. of him
waving homestead and all
other exemptions as to this debt
this Nov. 3rd 1884.

Jas. H. Kelly, {Seal}

To the Hon. John A. Kelly Judge of the Circuit Court of Lee County Virginia:

Your Orator William A. G. Barron a citizen of said county of Lee, would respectfully show unto your Honor, that one Jas. H. Kelly is justly indebted to him in the sum of $85.00 and that the same will become due and payable to him on the first day of March 1885 to show which your Orator states that on the 3rd day of Nov. 1884 the said James H. Kelly made and delivered to your Orator his certain promissory note in writing signed by his proper name and now here filed as exhibit of this Bill Marked (A) the date whereof is the day and year last aforesaid, by which said promissory writing the said Jas. H. Kelly undertook promised and bound himself to pay to your Orator by the first day of March 1885 the said sum of Eighty five dollars for value received, and as to said promissory writing the said Jas. H. Kelly waived the benefit of his homestead exemption. Your Orator now states that the whole of said debt is now owing to him, no part thereof having been paid paid to him, by said Jas. H. Kelly or any one else for him. Your Orator now states that before the said debt became payable the said Jas. H. Kelly absconded from the state of Virginia, and is now a resident of the state of Oregon as your Orator is informed and believes, and he having so left the state of Virginia. Your Orator is advised that he is at once entitled to process against his estate to collect said debt by process of foreign attachment.

Your Orator now states that at the time said Jas. H.

Kelly so absconded from the state of Virginia as well as now that he was the owner of and held an equitable interest in a certain tract or parcel of land lying and being in said county of Lee near Pennington Gap, containing some 35 or 40 acres. And in order to show the extent of his interest therein it is necessary here to state the facts in connection therewith. And to do so your Orator states that several years ago one Alfsha Pennington now Alfsha Parrott widow of D.C. Parrott dec'd, bargained and sold, (but did not convey) to one Vincent H. Kelly a certain tract or parcel of land which descended to her from her father John Z. Pennington dec'd, supposed to contain 170 acres or more, but as said tract of land was encumbered by dower, the said Alfsha Parrott only sold to said V.H. Kelly so much of said tract of land as by estimate of said dower, and reserved to herself the reversion in the land covered by said dower; Your Orator states that said V.H. Kelly has made considerable payments on the purchase price of said land, but he is informed and believes that there is yet due to Mrs Parrott some $700- or $800 of the purchase money therefor, but the precise amount thereof your Orator cannot state, and he is advised that the whole of said land so sold is bound for the unpaid purchase money since the legal title thereto is still in the said Alfsha Parrott who your Orator states is ready and willing to convey the same to said V.H. Kelly or any one else, when the purchase money due her is fully paid. Your Orator now states that while matters stood as just stated, the said Vincent H. Kelly undertook to bargain and sell and did do so to his son the said James H. Kelly about 35 or 40 acres of

the land so purchased of said Alpheus Parrott for the sum of $700.00 and put the said Jas H. Kelly in the possession thereof, who has lived thereon ever since, and who has made some improvement thereon by erecting a dwelling house and other buildings on the same; Your Orator further states that said Jas. H. Kelly as he is informed and believes has paid to his father D. H. Kelly toward the purchase price thereof about $300. leaving still due of the purchase money about $400. with some accruing interest thereon

Your Orator further states that on the day of 185 said D. H. Kelly & wife conveyed in trust to Henry J. Morgan as trustee the tract of land purchased by him from said Alpheus Parrott except the 35 or 40 acres bargained & sold by him as aforesaid to his son the said Jas H. Kelly, and by the same deed of trust the said D. H. Kelly bargained ~~and~~ sold and assigned to said Morgan said debt on said Jas H. Kelly for said unpaid purchase money, for the use and benefit of the creditors of said D. H. Kelly mentioned in said deed of trust a copy of which is hereunto filed marked (B)

Your Orator is advised that the whole of said land is in the first place liable to the purchase money due Alpheus Parrott, and in the second place that said 35 or 40 acres is first liable for the balance of the purchase money due thereon, and that in the 3rd place any balance that may remain of said 35 or 40 acres after the purchase money due thereon shall be paid is liable in a court of equity to be applied to the payment of your Orators said claim and to obtain that relief is the object of this bill.

The premises considered your Orators prayer is that said James H. Kelly Alpheus Parrott, D. H. Kelly & H. J. Morgan

be made defendants to this bill and required to answer the same fully on Oath. That an order of publication be entered posted and published against said Jas. H. Kelly that Proof of foreign attachment be issued and levied on the equitable interest of Jas. H. Kelly in said 35 or 40 acres of land herein referred to. And ~~that the same~~ upon a hearing of the cause a decree be entered in favor of your Orator against said Jas. H. Kelly for said sum of $85.00 with legal interest thereon from March 1st 1885 till paid and the cost of this suit and that said 35 or 40 acres of land be sold and the proceeds thereof be applied to the payment of said purchase money lien and the claim of your Orator and if in any wise mistaken in this his special prayer then your Orator prays for all general relief note for a court of equity to grant May the Commonwealths writ of Sfa issue directed to.

Henry J. Morgan P.Q.

B. 8. 24 to Jany 1886.
A 15.00
B 5.00
D. 5.00
Cts.

Wm. N. F. Barron

vs. } Bill & Foreign attachment

James H. Kelly & al.

1885. Apr. Bill filed Sum.
Eld. on Home defts & O.P.
& Decree Nisi
" May Contd for O.P.
" June & July contd.
" Aug. on Pub. completed
Decree Nisi confd.
& cause set for hearing.
Nov. Continued.
1886. Mr. continued
1887 Contd 1888 Contd
1889 " 1890 Apr Contd
1890 Sept Decree final

To the Hon. John A. Kelly Judge of the Circuit Court of Lee County Va.

The Separate answer of W.H. Kelly to a Bill filed in this Honorable court against him & others by Wm N G. Barron jr

Respondent says it is true that he purchased of Mrs Alpha Parrott the tract of land, as stated by the plaintiff in his bill, and it is also true, that he made considerable payments on the purchase price thereof & it is also true that he is yet owing a part of the purchase price, but the exact sum yet due he cannot state: Respondent says that soon after making said purchase, he became aware that he would be very hard pressed to pay for said land, and in order to enable himself to meet said payments as they fell due he induced his Son - the deft Jas. H. Kelly to agree to take a certain boundary of said land supposed to contain 35 or 40 acres ~~of said land~~ at the price of $700. which the said deft agreed to do. and with this understanding and agreement the said Jas H. Kelly commenced making to respondent sundry small payments on said land and respondent turned over said payments so made him to D.B. Parrott and his wife as payments on respondents purchase from Mrs Parrott. and thus things continued until the Winter of 1883. when by a settlement then made by respondent and the said Jas. H. Kelly it was found that said deft. had paid on the purchase price of his said land some where between three and four hundred dollars. leaving still due of the purchase money the sum of $400. at

the date of said settlement which took place about the 5th day of Feb 1883. and said sum of $400. with interest thereon from said last named date, the said Jas. H. Kelly still was and the same has been assigned to Henry J. Morgan as trustee for the benefit of respondents creditors:

Respondent having now answered as fully as he is advised it is material for him to answer prays hence to be discharged with his reasonable costs.

Vincent H. Kelly

I do swear that the statements made in the foregoing answer are true according to my present recollection so help me god.

V. H. Kelly

Sworn to before me this 3rd day of Augt 1885

Henry J. Morgan Comr.

Vincent H. Kelly

Ads } Answer

W. H. G. Bassett jr

Filed Aug. 14th 1885.

J. A. S. Hyatt C. C.

To the Hon John A. Kelly Judge of the Circuit Court of Lee County Va.

The Separate answer of Henry J. Morgan Trustee to a bill filed in this honorable court against him & others by Wm. N. G. Bacon.

This respondent for answer to said bill or so much as he deems it it material for him to answer says it is true as stated by the Plaintiff that his co-defendant O. H. Kelly owing on the day of 188 executed to him as trustee a deed of trust for the benefit of the persons therein named, and among other articles of property thereby conveyed by said O. H. Kelly to respondent as a debt due to said O. H. Kelly from his Son Jas. H. Kelly for the balance of the purchase price of the 35 or 40 acre tract of land in the plaintiffs Bill mentioned, amounting to $400. with accruing interest; which debt of purchase so due the said O. H. Kelly from Jas H. Kelly was by said deed of trust assigned and transferred to respondent as trustee by said O. H. Kelly for the benefit of his creditors as shown by exhibit (B) with the plaintiffs Bill.

As respondent is informed and believes, no note or bond was ever given by said Jas H. Kelly to said O. H. Kelly for the unpaid purchase money for said 35 or 40 acres of land, and hence respondent will have to rely on oral proof of the amount actually due & owing on account thereof, and of this he will produce proof in due time.

Respondent states that whatever sum may be due of said unpaid purchase money constitutes a valid and subsisting lien on said 35 or 40 acres of land and the same

is paramount and superior to any other lien that can be created thereon by any creditor of said Jas. H. Kelly and such purchase money must be first paid before any other creditor of said Jas. H. Kelly can get anything out of said land. Respondent says he has no personal interest in the said deed of trust further than such as incident thereto as trustee but that on behalf of the persons secured by said trust deed and interested therein he joins in the plaintiffs prayer to attain a sale of said 35 or 40 acres of land, and so much of the proceeds of the sale thereof as may be necessary be first applied to the payment of the purchase money lien due respondent as trustee.

Henry J. Morgan Trustee

Henry J. Morgan Trustee

vs. } Answer

W N G. Bacon

Filed Aug. 14th 1885.

J. A. L. Hyatt C. C.

Wm A. G. Barron — Pltff

vs. — In Eqy

James H. Kelly & others — Defts

On calling this cause at the present Term it was announced by the Pltffs counsel at the Bar that the debt to secure which this suit had been brought, had been fully paid to the plaintiff. It is therefore adjudged ordered and decreed that the parties be hence dismissed and the cause stricken from the docket.

Wm N G. Barron

vs } Decree No 1 Final

James H. Kelly et al

Cit Cor B 43
Page 280
Jas Hyatt ce

Entered this
Sept. 2 1890
H.S.Orr

William N. G. Barron Pltff

vs. } In Eqty

Jas. H. Kelly & al Defts

I William N. G. Barron plaintiff in the above styled suit do swear that in this suit I verily believe that I am entitled to and ought to recover therein against Jas H. Kelly the sum of $85.00 and that the same will become due and payable the 1st day of March 1885 that said James H. Kelly is a non resident of the state of Virginia and that he owns an equitable interest in a certain tract of land lying and being in said county of Lee supposed to contain some 35 or 40 acres and was sold to him by Vincent H. Kelly, and on which he actually lived and which is liable to be attached as affiant is informed and believes. So help me God.

Wm N. G. Barron

Sworn to before me by Wm. N. G. Barron Feby 24th 1885

J. A. G. Hyatt C. C.

Wm N. G. Barron

vs } affidavit

James H. Kelly et al

Virginia

In the Clerk's Office of the circuit Court of Lee County, on Tuesday the 24th day of February 1885.

Wm. N. G. Barrow Pltff. } In Chcy
against
Jas. H. Kelly et al Defts }

The object of this suit is to recover against the Defendant Jas. H. Kelly, the sum of Eighty five Dollars with legal interest thereon from the 1st day of March 1885 till paid and the costs of this proceeding. and to subject to the payment thereof the the Land in the bill and proceeding mentioned, which has been attached for the purpose, and it appearing from an affidavit filed in this Cause that the Defendant Jas. H. ~~Kellyn~~ is a non resident of this State:- It is therefore ordered that he appear here within one month after due publication of this order and do what may be necessary to protect his interest in this suit.

J. A. Hyatt C. C

Wm N. G. Barrow

vs } Order Pub

Jas. H. Kelly et al

A copy of this order delivered to Lee Sum for Pub. & alike copy posted at front door Lee C H at the March Term of Co Court. 1885

J. A. G. Hyatt C.C.

The Commonwealth of Virginia,

To the Sheriff of Lee County--Greeting:

WE COMMAND YOU to summon ~~Hugh Barron~~ Jas. H. Kelly Alpha Parrott, Henry J. Morgan trustee and V. H. Kelly

to appear at the Clerk's office of the Circuit Court of Lee County, at the Court House, on the first Monday in April next, being Rule Day, to answer a Bill in Chancery exhibited in our Court against them, by ~~William Pennington~~ Wm N G B Irvin

And have then and there this Writ. Witness, J. A. G. HYATT, Clerk of our said Court, at the Court House, this 25th day of February, 1885, in the 109 year of the Commonwealth.

J A G Hyatt, Clerk.

A Copy---Teste:

J. A. G. Hyatt c o

The proper affidavit having been made by the Plff. Wm Pennington, the officer executing this Spa. will attach the lands in the bill & proceeding mentioned, and hold the same in his hands so attached to await the future orders of the Court. Feby 25 - 1883

J. A. G. Hyatt C.C.

For
J. H. Kelly

The Commonwealth of Virginia,

To the Sheriff of Lee County--Greeting:

WE COMMAND YOU to summon Jas. H. Kelly, Alpha Parrott and Henry J. Morgan Trustee

to appear at the Clerk's office of the Circuit Court of Lee County, at the Court House, on the first Monday in April next, being Rule Day, to answer a Bill in Chancery exhibited in our Court against them, by Wm. N. G. Barron

And have then and there this Writ. Witness, J. A. G. HYATT, Clerk of our said Court, at the Court House, this 24th day of February, 1885, in the 109 year of the Commonwealth.

J. A. G. Hyatt, Clerk.

A Copy---Teste:

The Bracher affidavit having been made, the Officer executing this Spa, serve by the Deff. the Officer executing this Spa, serve attach the land in bill mentioned consisting of about 35 or 40 acres, lately sold to the defendant Jas. H. Kelly by J. H. Kelly and on which the Deft Jas. H. Kelly lately resided, and levied the same in this hands so attached to answer the future orders of the Court, Febr 24, 1885.

J. A. Bryant C.C.

H. J. M.

Wm. N. G. Barron
vs } Spa in Chcy
Jas. H. Kelly et al

To April Rule 1885

I accept service of the within Spa in chy.
Henry J. Morgan
Feb 24 1885

Executed by delivering an office copy of this Spa to Alpha Parrott March 9 1885
S. H. Ewing
Deft for R. D. Flanary
S.L.C.

By virtue of the order of attachment herein endorsed I have levied this Spa on the tract of land lately sold by J. H. Kelly to the Deft Jas. H. Kelly & on which his family now live, containing 35 or 40 acres lying and being in the county of Ln.
this 24 th day of Feb. 1885
at 10 o'clock A. M.

Lion Lovely
deputy for R. D. Flanary S.L.C.

Publisher's Certificate.

JONESVILLE, VA., March 20th, 1885.

I, A. M. Goins, Publisher of the LEE COUNTY SUN, a weekly newspaper published at Jonesville, Lee County, Virginia, do certify that the annexed Chancery Order was published four successive weeks in said newspaper, publication ending March 20th, 1885.

A. M. Goins, Publisher.

VIRGINIA—In the Clerk's office of the Circuit Court of Lee County, during vacation on Tuesday, the 24th day of February, 1885.

IN CHANCEY.

Wm N G Barron, Plaintiff, versus Jas H Kelly and others, Defendants.

The object of this suit is to recover against the defendant, Jas H Kelley, the sum of eighty-five dollars, with legal interest thereon from the 1st day of March, 1885, till paid and the cost of this proceeding, and to subject to the payment thereof the land in the bill and proceedings mentioned, which has been attached for the purpose: and it appearing from an affidavit filed in this cause that the defendant, Jas H Kelly, is a non-resident of this State: It is therefore ordered that he appear here within one month after due publication of this order to do what may be necessary to protect his interest in this suit. A copy—teste:

J A G HYATT, C C

H J MORGAN, P Q

Pub. Fee $5.00

Wm. N. G. Barrow

vs } Pub. certif

Jas. H. Kelly et al

Pub. Fee A. M. G. 5-8